IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1430 of 1984

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEVUBEN JAYATBHAI JALU

Versus

NATIONAL INSURANCE CO.LTD.

Appearance:

MR PM THAKKAR for Appellants

MR SUNIL B PARIKH for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE M.H.KADRI

Date of decision: 14/02/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. This is an appeal under section 110-D of the Motor Vehicles Act, 1939, at the instance of the original applicants who had filed an application for compensation under section 110-A of the said Act. The Motor Accident Claims Tribunal (Aux.), Rajkot, rejected the petition in toto, basically on the finding that the Insurance policy in question did not cover the risk of the deceased Jayatabhai Jalu, whose death gave rise to the claim in question.

2. In order to apply the correct principles of law, it is necessary first to retain focus on certain basic facts as they appear in the present case. The following facts are either undisputed or undisputable.

[i] The deceased Jayantbhai Jalu was the owner of a truck which was registered and used as a public carrier.

[ii] On the date of the accident the owner himself was behind the steering wheel of the said truck and was effectively the driver of the said truck.

[iii] The truck, while proceeding at a reasonable and safe speed on the road, due to some mechanical defect, slipped off the road and turned turtle resulting in the injuries to the driver-cum-owner which led to his death.

3. The heirs and dependents of the said deceased owner-cum-driver filed the claim petition for compensation on account of his death. It is pertinent to note at this stage that the claim for compensation was made only against the Insurer of the truck in question, and no other party was joined as opponent-defendant. The reason for this is obvious, inasmuch as the applicants contended in the claim petition that the policy in question covers the risk of both the owner and the driver of the vehicle, or at the very least covers the risk of owner-cum-driver. This being the basis of the claim, according to the claimants, since no other vehicle was involved in the accident, there was no question of holding any other driver of any other vehicle responsible for the accident. Consequently, there was no question of preferring the claim as a third party qua such other vehicle.

4. It is not necessary to discuss in detail the evidence led by the claimants to establish that the accident in question which led to the death of the

owner-cum-driver was not the result of any negligence. It merely requires to be noted that the claimants have examined the cleaner of the said truck, who also suffered the same accident, and on the basis of his deposition, the Tribunal has come to the conclusion that the accident was caused by some mechanical defect in the truck, whereby it slipped off the road and turned turtle and that the accident in question was not the result of the driver's own negligence. In any case, in our opinion, this finding is not of importance, but we have merely noted the same so that the contention of the respondent Insurance Company can be answered. In this context the respondent insurer had contended that under the Motor Vehicles Act, a claim is basically a claim for damages under torts, and that such claim could only be entertained or allowed where there was proof of negligence on the part of the offending vehicle. As aforesaid, the claimants have not presented nor pressed their claim on the basis that it was the driver of any other offending vehicle which was responsible for the accident. The only basis for the claim was that the policy in question under which the vehicle and the owner were insured would cover the risk of the driver-cum-owner or would at the very least cover the risk of the owner.

4.1 In view of the Tribunal's finding, confirmed in this appeal, it could not be urged by the Insurer that the accident was due to the negligence of the Insured himself and that therefore, the tort-feasor himself could not claim compensation.

5. There is no dispute that the vehicle viz. the truck which was being driven by the deceased at the time of the accident was in fact insured by the respondent Insurer. There is also no dispute that the insured, in his capacity as the owner of the truck, was driving the truck at the time of the accident. Thus, in order to retain focus on the aspect as to whether the risk of such a person was covered under the policy in question, we are required to consider the coverage of the policy both in respect of the owner as also the driver.

6. In order to examine this aspect of the matter, we are required to examine and interpret the terms and conditions of the policy in question, and also to examine the coverage offered by this policy, both in respect of the owner as well as the driver.

7. The policy in question is at Exh.52 on record. It is not in dispute, as it cannot be, that the policy is a Commercial Vehicle Policy, and that it is also a

Comprehensive Policy.

8. In order to avoid any confusion with certain academic contentions raised by the respondent Insurance Company, we may only observe in passing that a comprehensive policy in law, means only that (i) it provides coverage in respect of the minimum risks specified and contemplated by section 95 of the Act, (ii) it offers additional coverage in respect of damage to the vehicle insured, and (iii) it may also cover additional risks/damage as may be specified in the policy on payment of additional premium in respect of such additional and specific risks.

9. On examining the policy at Exh.52, as a specific contract between the insurer and the insured, we are required to note that the policy prescribes "Limitations as to use". As against this phrase "Limitations as to use", certain limitations which are specific to this particular policy have been typed out. The first limitation is "public carrier". Just below this particular limitation, a further endorsement is made as under:

"Subject to endorsement no.16, 21, 23, 26, 57 and market value clause attached hereto".

A further limitation as to use is imposed under the sub-head of "Driver". Under this sub-head, it is noted as under:

The vehicle may be driven by -

"(a) the insured
(b) any other person provided he is the insured's employee and is driving on his order or with his permission.

Learned counsel for the appellants sought to rely upon this endorsement pertaining to the driver to emphasise that under sub-clause (a), the insured was also to be regarded a driver since he was permitted to drive the vehicle, and that therefore the policy would cover the risk to the insured while he was in the place of a driver.

10. This submission is fallacious for a number of reasons. Firstly, the clause pertaining to the driver as found in the said policy comes under the general heading of "Limitations as to use". This can only mean that the persons who are designated under the head of "driver" are

the persons who may drive the vehicle without incurring any disqualification, and without loss of coverage, on the ground that there was violation of "Limitations as to use". It only means that where the insured was driving the vehicle, he would not incur any disqualification under the particular restriction imposed under the head of "Limitations as to use". However, this would only imply that the insured was authorised under the policy, without disqualification, to drive the vehicle which was the subject matter of the policy. Merely because he was so authorised to drive the insured vehicle, does not ipso facto cover the risk of injury or death under the policy in question.

11. To ascertain whether such risk is covered or not, we may first examine the capacity of the deceased as a driver. In the policy we find (since it is a comprehensive policy), a tabular column specifically setting out the specific risks covered against which a specific amount of premium is charged and paid.

11.1 As aforesaid, this is a comprehensive policy, which necessarily covers the risk which an Insurance Company is bound to cover (as a minimum statutory obligation) under section 95 of the Act. Thus, the basic coverage attracts a specific premium of Rs.1661/-. An additional risk of riot is covered under the specific premium of Rs.375/-. Legal Liability to paid six coolies is covered under the specific premium of Rs.48/-. These aspects are not crucial on the particular facts of the case, but have been noted only to illustrate that specific risks covered attract a specific premium and these have been individually set out in the policy. We now come to an additional and specific risk covered, which has been designated as "Legal Liability to driver and cleaner" attracting the specific premium of Rs.16/-. It is obvious that this specific premium is charged in respect of covering the risk of the owner's legal liability towards the driver and cleaner. This coverage of risk for a special premium is intended to take care of a situation where a claim may arise against the owner from either the driver or the cleaner. Coverage of this risk specifically contemplates legal liability. Obviously and it goes without saying, that this liability would be the liability contemplated by section 95 (to the extent of compensation payable under the Workmen's Compensation Act). It also requires to be noted that "Legal Liability to driver" pertains to a driver other than the Insured, inasmuch as in a situation of owner-cum-driver, there cannot be any legal liability to himself.

11.2 However, learned counsel for the appellant places specific reliance upon a specific risk covered under this column and designated as "unlimited personal injury, but property damage upto Rs.3 lacs", as against which a specific premium of Rs.64/- is charged and paid.

12. On behalf of the appellants it was contended that this clause contemplates personal injury, without any upper limit to such a claim. At first blush it may appear that it is very reasonable submission. A simple and a plain dictionary meaning of this phrase with particular emphasis on the phrase "unlimited personal injury" may tend to indicate that the risk of injury to the person injured is covered under the policy and that this coverage is unlimited. However, this is a facile proposition which cannot be accepted straightaway.

12.1 As already observed hereinabove, the policy is subject to various endorsements, including endorsement no.16. Technically this is known as IMT-16. The various endorsements including IMT-16 is also attached to the policy and forms part thereof. IMT-16 specifically deals with "legal liability to persons employed in connection with the operation and/or maintenance and/or loading and/or unloading of motor vehicles". It is therefore obvious that when the phrase "unlimited personal injury" is required to be construed, it cannot be construed independently and dehors IMT-16. Once IMT-16 is taken into consideration, it becomes obvious that the phrase "unlimited personal injury" pertains to the liability which may arise against the insured by persons employed by him. Obviously, therefore, the phrase so vehemently relied upon by the appellants does not and cannot refer to personal injury sustained by the insured himself. It cannot be suggested that merely because this insured was authorised to drive the vehicle, without incurring any disability, under "Limitations as to use" clause, the authority to function as a driver would ipso facto cover the risk of personal injury. However, we do not propose to rely on this finding merely on the basis of our own interpretation of the policy.

13. The contents of this policy have been explained by Kanubhai Manilal at Exh.56, who is the Assistant Divisional Officer of the Insurance Company. To obtain a true and correct meaning of the deposition of this witness we propose to examine his deposition in two parts viz. his examination-in-chief and also the cross-examination. The relevant portion in the examination-in-chief of this witness indicates that the

policy does cover third party risk even where the owner drives the vehicle. This witness emphatically asserts that if the owner is driving the vehicle, and as a result he himself suffers injury or death, this risk is not covered by the policy. This officer further explains that there is a provision for an owner to cover the risk of injury or death by paying a special premium of Rs.42, but this would be subject to an upper limit in respect of such coverage. This officer further explains the application as also the implication of IMT-16 which forms part of the policy. This witness explains that IMT-16 applies to the liability which may be incurred by the owner in respect of the claims preferred by paid employees such as driver and cleaner, but does not cover the risk where the owner himself is driving the vehicle and functioning as a driver. This officer has further explained the special premium of Rs.64/- paid by stating that it pertains to covering the risk of injuries and damage to property, but only in respect of third party claims.

14. As against the detailed explanation offered by this witness on behalf of the insurer, we find from the cross-examination of the witness that none of the explanations given in the examination-in-chief have been challenged at all. In this fact situation we can only observe and find that the explanation offered by the witness in respect of the specific risks covered against specific premium charged under the policy in question do not cover the risk of injury or death to the owner of the vehicle i.e. the insured.

15. Learned counsel for the appellant then sought to place reliance upon the decision of the Supreme Court in the case of Chimajirao K. Shirke Vs. Oriental Fire and General Insurance Co. Ltd., reported in AIR 2000 SC 2532. Learned counsel for the appellants sought to urge on the basis of this decision that where the insurance cover taken by the insured in respect of his truck covering the risk for "unlimited personal injury", the Insurance Company would be liable for such death.

15.1 Before we deal with the facts and the law dealt with by the aforesaid decision relied upon by learned counsel for the appellant, we are first required to keep in mind the observations of the Supreme Court as to how its own decisions are to be read and interpreted. In this context we are required to take note of the principles laid down by the Supreme Court in the case of State of Punjab Vs. Baldevsing [40(3) GLR page 2483], which follows and reiterates the earlier decisions of the

Supreme Court in the case of Commissioner of Income Tax Vs. Sun Engineering Works [1992(4) SCC 363] and in the case of Madhavrao Scindia reported in 1971 (1) SCC 85. The sum and substance of the dicta of the Supreme Court, in the context of the interpretation of its own decisions, is to the effect that such a decision is an authority only for what it decides, and not everything said therein constitutes a precedent. The Supreme Court decision must be read and applied in the context of the question raised and considered in that decision.

15.2 In the light of these aforesaid principles, we may now consider the decision relied upon by the learned counsel for the appellant.

15.3 In the said deicision viz. Chimajirao Shirke (supra) the only ratio laid down by the Supreme Court (para 10) is that where a particular factual stand has been taken in the pleadings, such a stand cannot be controverted on the basis of a legal proposition.

15.4 The fact that, in this decision the Supreme Court found that the Insurance Company was liable under the policy in question to meet the claim of the insured, is not a proposition in law, and is not a finding recorded on the interpretation of the specific clause in the policy. This finding is recorded only because the Supreme Court did not permit the Insurance Company to take up a legal stand, contrary to the specific contention taken in its own written statement filed in the trial court.

15.5 On the facts of the present case, we find from the written statement of the Insurance Company at Exh.26, that in para 11 thereof the Insurance Company has specifically contended as under:

> "It is submitted that the deceased insured (insured-cum-driver) was neither required to be covered under the Motor Vehicles Act, nor was he actually covered under the Insurance Policy and therefore, the question of paying the compensation does not arise."

16. Thus, on the facts of the case we can only observe that the specific contention of the insurer was that the risk in respect of injury or death of the insured himself was neither required to be covered, nor was such risk in fact covered under this specific insurance policy in question. What necessarily follows, therefore, is that it is this very contention which is

sought to be supported by the Insurance Company by the interpretation of the relevant clauses in the policy, both by way of submissions before this Court, and also by supporting these submissions by the evidence on record. Once we find that the terms of the policy have been explained by the Officer, which is also in conformity with our independent interpretation of the relevant clause of the policy, we can only find that the risk of the owner is not covered under the policy.

17. In the premises aforesaid, we find that the judgement and award passed by the Tribunal dismissing the claim petition of the original claimants on the identical question decided by us, is eminently sustainable and does not require interference. Consequently we find that there is no sustainable ground in the present appeal and the same is, therefore, dismissed with no order as to costs.

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